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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re CESAR R., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CESAR R.,

Defendant and Appellant.

G046443

(Super. Ct. No. DL039844)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregory
W. Jones, Judge. Affirmed.

Meldie Moore, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and
Warren Williams, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Cesar R., a minor, challenges the juvenile court's finding he violated Penal Code section 148 by unlawfully obstructing a police officer. Appellant argues he resisted an illegal search and therefore did not obstruct an officer engaged in the lawful performance of his duties. We hold the officer's search was lawful and therefore affirm the judgment.

FACTS

At 10:15 p.m. on December 1, 2011, Investigator Kurt Lawson of the Orange Police Department noticed appellant sitting on the steps outside an apartment complex. Lawson had encountered appellant several times before and knew he was a probationer subject to search and seizure. After parking his car, Lawson approached appellant and asked him to come down to the sidewalk so he could search him. At the time, appellant was listening to his iPod. He promptly came down the stairs and handed Lawson the device. Lawson searched appellant, and finding nothing noteworthy, tried to access his iPod.

The iPod was protected by a password, so Lawson asked appellant what it was. Appellant said his lawyer told him he did not have to reveal his password. Lawson reminded appellant he was on probation and subject to search and seizure, but appellant didn't budge on the password. He said that, although there was nothing incriminating on his iPod, he just didn't trust Lawson. Lawson then questioned appellant about his address, date of birth, school and whether he had any scars or tattoos. When appellant refused to answer the questions, Lawson told him he was in violation of his probation and placed him under arrest.

Appellant was charged with violating Penal Code section 148, which makes it a crime to willfully resist a peace officer who is engaged in the lawful performance of his duties. (Pen. Code, § 148, subd. (a)(1); *People v. Simons* (1996) 42 Cal.App.4th 1100, 1108-1109.) At trial, the People argued appellant violated this section both by refusing to answer Lawson's basic questions about his address and by refusing to tell

Lawson his iPod password. The juvenile court rejected the first factual basis for the violation, but it found appellant obstructed Lawson by failing to disclose his password.

DISCUSSION

Appellant argues Lawson did not have the right to ask him for his password, and therefore he did not obstruct him in the *lawful* performance of his duties when he refused to tell him what it was. We disagree.

At the time of the encounter, appellant was on probation subject to the condition that he “[s]ubmit [his] person, residence and property to search and seizure by any peace/probation officer/school official any time of day or night, with or without a warrant, probable cause, or reasonable suspicion.” By agreeing to this condition, appellant waived his Fourth Amendment rights, except the right to be free from harassment or searches that are conducted in an unreasonable manner. (*People v. Bravo* (1987) 43 Cal.3d 600, 607; *People v. Mason* (1971) 5 Cal.3d 759, fn. 3, disapproved on other grounds in *People v. Lent* (1975) 15 Cal.3d 481, 486, fn. 1.)

Appellant does not allege that Lawson harassed him or searched him unreasonably. In fact, he concedes Lawson had the right to search both him and his iPod. Appellant also admits Lawson had the right to make him unlock the iPod himself. However, he contends Lawson did not have the right to *ask* him for his password. Even though he consented to a search of his property as condition of probation, appellant argues that request exceeded the scope of his consent because his password is a mental impression, not “property.”

In so arguing, appellant relies on cases which have recognized an expectation of privacy in password-protected computers. (See, e.g., *United States v. Heckenkamp* (9th Cir. 2007) 482 F.3d 1142; *United States v. Buckner* (4th Cir. 2007) 473 F.3d 551.) However, the issue in those cases was whether the police had the right to search for information contained *within* a computer. Since it is undisputed Lawson had the right to search the contents of appellant’s iPod, those decisions are inapt. They

simply did not address the question presented here, which is whether the police may ask the owner of an electronic device for its password when the contents of the device are otherwise subject to a lawful search.

Appellant argues a password is entitled to special protection because it is “among the most private of any personal information” and can be used to access untold amounts of information about a person. However, “[a] password on a computer does not automatically convert a routine search into a non-routine search.” (*United States v. McAuley* (W.D.Tex. 2008) 563 F.Supp.2d 672, 678.) Although we acknowledge the great privacy concerns of the digital age (see *United States v. Jones* (2012) __ U.S. __, __; 132 S.Ct. 945, 957 (conc. opn. of Sotomayor, J.)), the character of the item searched does not affect the validity of a search. (*People v. Diaz* (2011) 51 Cal.4th 84, 94-95 [valid search of phone’s text messages]; *United States v. Flores-Lopez* (7th Cir. 2012) 670 F.3d 803 [valid search of cell phone to determine the phone number]; *United States v. Finley* (5th Cir. 2007) 477 F.3d 250, 258-260 [valid search of phone’s call logs and text messages].) We see no reason the Fourth Amendment should protect passwords any more than the data they guard.

Like a key to a locked door, appellant’s password was simply a means to the end of conducting a valid search. Because the password would not have granted Lawson access to any information he was not lawfully entitled to search, it doesn’t matter whether he asked appellant for the password or had appellant unlock the iPod himself. In choosing the former option, Lawson did not violate appellant’s rights, nor did he exceed his legal duties. Therefore, appellant’s refusal to disclose his password to Lawson clearly amounted to unlawful obstruction of an officer. There is no basis for disturbing the juvenile court’s finding in that regard.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.